

WHITE MOUNTAIN APACHE CRIMINAL CODE

Amended 1/14/2000

WHITE MOUNTAIN APACHE

CRIMINAL CODE

CHAPTER FIVE

VICTIM'S RIGHTS ACT

[NOTE: CHAPTER FIVE IS DERIVED FROM ORDINANCE NO. 171, ENACTED JULY, 1991]

SECTION 5.1 VICTIM'S BILL OF RIGHTS

A. To preserve and protect victim's rights to justice and due process, a victim of crime has a right:

(1) To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

(2) To be informed, upon request, when the accused or convicted person is released from custody or has escaped.

(3) To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.

(4) To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.

(5) To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.

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(6) To confer with the prosecution after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

(7) To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.

(8) To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

(9) To be heard at any proceeding when any post-conviction release from confinement is being considered.

(10) To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

(11) To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the Tribal Council to ensure the protection of these rights.

(12) To be informed of victims' constitutional rights.

B. A victim's exercise of any right granted by this section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

C. "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.

D. The Tribal Council, or the people by initiative or referendum have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

E. The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the tribal council or retained by victims.

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PLAN OF OPERATION
NAVAJO VICTIMS' RIGHTS COMMISSION

ARTICLE I

Section 1.0 Establishment

There is hereby established under the Navajo Tribal Council, a Commission to be known as the Navajo Victims' Rights Commission (hereafter referred to as the "Commission.>").

ARTICLE II

Section 1.0 Place of Business

The Commission's head office and principal place of business shall be in Window Rock, Navajo Nation (Arizona), but other offices and places for conducting business, both within and without the Navajo Nation, may be established from time to time by the Commissioners.

ARTICLE III

Section 1.0 Purpose

The purpose of the Commission shall be to aid in enforcing the rights of the actual and potential Indian victims of crime by assisting those who have become victims of crime, and by examining the problems of crime as they exist on the Navajo Reservation and taking action to attempt to prevent victimization.

ARTICLE IV

Section 1.0 Authority, Duties and Responsibilities

Within the constraints of the Navajo Tribal Government, the Commission shall have the power to take any and all action deemed necessary and appropriate for the accomplishment of its purpose and within the general powers of the foregoing, the Commission shall have the following specific powers:

1. To hold investigations to inquire into the nature, amount and causes of victimization in Navajo country.
2. To make recommendations to the Navajo Tribal Council to ensure that, within constitutional limitations, the law enforcement authorities have the proper legal tools to enforce the laws effectively, thereby preventing the victimization of Indian people.

3. To appear before Tribal, State and Federal bodies, and agencies, as representatives of the victims of crime to ensure proper recognition and enforcement of the victims' rights, and to make recommendations for changes in the criminal justice system, within constitutional limitations, which would help prevent victimization.

4. To assist victims of crime in receiving any compensation, either from the State, the perpetrator, or other lawful sources if provisions for such compensation have been made, especially to investigate the victim compensation provisions in the Treaty of 1868 as they relate to the Federal Government.

5. To offer aid and counsel through the Commission's staff to the Indian victims of crime.

6. To do all things necessary and proper to accomplish its purpose of aiding in enforcing the rights of Indian victims of crime.

ARTICLE V.

Section 1.0 Membership

The Navajo Victims' Rights Commission shall consist of seven (7) members, all of whom shall be appointed pursuant to this Plan of Operation: one member of the Commission shall be the Prosecutor of the Navajo Nation, or his designated alternate; one member shall be the Chairman of the Codification of Laws Committee of the Navajo Tribal Council; one member shall be the Chairman of the Police Committee of the Navajo Tribal Council; one member shall be the Chairman of the Judiciary Committee of the Navajo Tribal Council; one member shall be appointed by the Chairman of the Navajo Tribal Council from the Office of the Chairman; one member shall be, subject to their consent, the Director of the BIA Office of Social Services or his designated alternate; one member shall be the Director of the Navajo Health Authority or his designated alternate. The Legal Department of the Navajo Tribe shall serve as counsel for the Commission, but the Commission may from time to time designate other counsel as needed. All members shall serve terms consistent with the term of the Office of the Chairman of the Navajo Tribal Council.

Section 1.1 Compensation

Members of the Commission shall serve without compensation but shall be reimbursed for expenses incurred in connection with the performance of their duties.

ARTICLE VI

Section 1.0 Transaction of Business

A majority of the membership of the Commission shall constitute a quorum for the transaction of business. The members of the Commission shall select one of themselves as its Chairman, for such term as they determine, and may appoint from within their membership other officers for such terms as they deem necessary. The Commission shall adopt rules for the conduct of its meetings and keep a record of all proceedings and transactions before it.

Section 1.1 Meetings

The Commission shall meet at least once a month or more frequently at the call of the Chairman of the Commission.

ARTICLE VII

Section 1.0 Personnel

The Commission may employ such personnel as needed to assist the Commission to carry out the duties, responsibilities and purposes herein named at such time that the Commission may be adequately funded. All such persons shall be compensated from the general payroll accounts of the Navajo Tribe. The Staff Director and Staff Secretary/Assistant shall be considered as employees of the Navajo Tribe, subject to the Personnel Policies and Procedures of the Navajo Tribe.

ARTICLE VIII

Section 1.0 Appropriation

The Navajo Tribal Council, in order to effectuate the Plan of Operation contained herein, may appropriate in the future such sums as are deemed necessary for the efficient operation of the Commission and staff. The receipt and disbursement of all funds shall be in accordance with Tribal procedures and policies. The Commission is hereby authorized to take any and all steps necessary to secure federal funding (grants and otherwise) in lieu of any Tribal appropriations. The Chairman of the Navajo Tribal Council is authorized to sign any federal grant on behalf of the Commission.

ARTICLE IX

Section 1.0 Amendment

The Advisory Committee of the Navajo Tribal Council may from time to time as is deemed necessary amend this Plan of Operation.

JOINT RESOLUTION OF THE POLICE COMMITTEE AND JUDICIARY COMMITTEE OF THE NAVAJO TRIBE

Recommending that the Navajo Tribal Council Adopt a Plan of Operation Providing for a Navajo Victims' Rights Commission

WHEREAS:

- 1. The problem of crime transcends racial, geographical, and political boundaries and has become an ever-growing threat to the Navajo people; and
2. While the problem of crime on the Reservation has received increasing attention by all the majority of authorities, the individual victim of crime, has been all but forgotten; and
3. Recognition of victims' rights by the Navajo Tribe would make it a forerunner in a new and critical area of the Criminal Justice System by protecting the inalienable rights of the Navajo people; and
4. While the Treaty of 1868 provides in part that members of the Navajo Tribe who are victimized by "Whites, or... other people subject to the authority of the United States" will be compensated by the Federal Government, this provision has never been enforced or acknowledged and a Navajo Victims' Rights Commission would be uniquely situated to pursue this possibility; and
5. The proposal has the support of the Chief Justice of the Navajo Nation, the Office of the Prosecutor, the Police Department and the Tribal Legal Department, and DNA, People's Legal Services, Inc.

NOW THEREFORE BE IT RESOLVED THAT:

The Police Committee and the Judiciary Committee recommend that the Navajo Tribal Council adopt a resolution and plan of operation establishing the Navajo Victims' Rights Commission.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Police Committee and the Judiciary Committee of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 7 in favor and 0 opposed, this 10 day of April, 1975.

/s/HARRY D. BROWN
Chairman, Police Committee

Chairman, Judiciary Committee

CTN-39-75

Class "C" Resolution
No BIA Action Required.

RESOLUTION OF THE
NAVAJO TRIBAL COUNCIL

Establishing the Navajo Victims' Rights Commission
and Adopting the Attached Plan of Operation

WHEREAS:

1. The victims of crime are truly the forgotten people in our criminal justice system; and
2. The history and tradition of the Navajo Tribe suggest that the Navajo people have always had special concern in caring for and protecting victims of crime; and
3. The establishment of a Navajo Victims' Rights Commission would continue that tradition of giving aid and counsel to the numerous victims of crime who are now too often bewildered and left out of the criminal justice system; and
4. While the Treaty of 1868 provides in part that members of the Navajo Tribe who are victimized by "Whites, or ...other people subject to the authority of the United States.", will be compensated by the Federal Government; this provision has never been enforced or acknowledged and a Navajo Victims' Rights Commission would be uniquely situated to pursue this possibility; and
5. The proposal has the support of the Chief Justice of the Navajo Nation, the Office of the Prosecutor, the Police Department, the Tribal Legal Department, and DNA, People's Legal Services, Inc.; and
6. The Police and Judiciary Committees of the Navajo Tribal Council thoroughly studied the attached Plan of Operation and unanimously recommend that the Navajo Tribal Council adopt it.

NOW THEREFORE BE IT RESOLVED THAT:

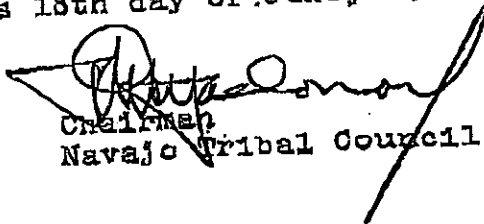
1. There is hereby established under the Navajo Tribal Council a Commission to be known as the Navajo Victims' Rights Commission.

2. The Plan of Operation attached to this resolution is hereby adopted and the Commission is hereby authorized and directed to conduct its operations in accordance therewith.

3. The Advisory Committee of the Navajo Tribal Council is hereby authorized to make such amendments to the Plan of Operation as it shall from time to time deem necessary.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 60 in favor and 0 opposed, this 18th day of June, 1975.


Chairman
Navajo Tribal Council